

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, :
 :
vs. : DOCKET NUMBER
 : 1:17-CR-0224-AT-CMS-1
ALLEN J. PENDERGRASS, :
 : ATLANTA, GEORGIA
DEFENDANT. : JULY 21, 2017

**TRANSCRIPT OF AUDIO RECORDED INITIAL APPEARANCE AND ARRAIGNMENT
PROCEEDINGS**

**BEFORE THE HONORABLE JOHN K. LARKINS, III
UNITED STATES MAGISTRATE JUDGE**

APPEARANCES OF COUNSEL:

FOR THE GOVERNMENT:

JEFFREY A. BROWN
UNITED STATES ATTORNEY'S OFFICE

FOR THE DEFENDANT:

VICTORIA CALVERT
FEDERAL DEFENDER PROGRAM, INC.

***MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED
TRANSCRIPT PRODUCED BY:***

**OFFICIAL COURT REPORTER: SHANNON R. WELCH, RMR, CRR
2394 UNITED STATES COURTHOUSE
75 TED TURNER DRIVE, SOUTHWEST
ATLANTA, GEORGIA 30303
(404) 215-1383**

P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; July 21, 2017.)

THE COURT: Good morning, everybody. Please be seated.

Okay. We are here on Case Number 1:17-CR-224, United States of America vs. Allen Pendergrass. Representing the Government is Jeffrey Brown. And seated next to Mr. Pendergrass is Victoria Calvert. Mr. Pendergrass is in the courtroom, as well. Good morning, sir.

I am Magistrate Judge Larkins, and this is your initial appearance before the Court. At this hearing, I'm going to advise you of your constitutional legal rights and also tell you about the charges against you in this case.

We are here because you've been charged with violations of federal law, specifically five counts of mail fraud, one count of money laundering conspiracy, and four counts of aggravated identity theft.

Have you received a copy of the indictment, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Have you had a chance to review it?

THE DEFENDANT: Yes.

THE COURT: All right. Do you understand the nature of the allegations in the indictment?

THE DEFENDANT: Yes.

1 THE COURT: I want to advise you that you have the
2 constitutional right to remain silent. And any statement you
3 make or answers to questions that you give can and will be used
4 against you as evidence in court. And that includes at this
5 proceeding and any related proceeding.

6 Do you understand that right, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I also want to advise you that you have
9 the right to be represented by a lawyer at every critical stage
10 of these proceedings including at today's proceeding. You can
11 hire an attorney of your own choosing. And if you can't afford
12 to hire an attorney, the Court will appoint a lawyer to
13 represent you at no cost to you. That cost will be borne by
14 the court, but the lawyer will represent your interests only.

15 Ms. Calvert, has Mr. Pendergrass completed a
16 financial affidavit?

17 MS. CALVERT: Yes, he has, Your Honor.

18 THE COURT: Okay. Thank you. Okay. I find based on
19 the financial affidavit you've provided, Mr. Pendergrass, you
20 are eligible for court-appointed counsel.

21 I understand that Bob Citronberg has been
22 representing you; is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In related state proceedings?

25 MS. CALVERT: Yes. He had paid him in the state

1 proceedings, which actually did not go -- end up going
2 anywhere. But there was some work done on the case.

3 THE COURT: Okay. Well, I think it is appropriate --
4 Mr. Citronberg is also on the CJA panel in this court. And so
5 I think it is appropriate to appoint him to represent you
6 with --

7 THE DEFENDANT: Thank you.

8 THE COURT: -- respect to the federal case too. I
9 think it will make it far more efficient for everybody. For
10 purposes of today's hearing, of course, Ms. Calvert can
11 represent you. Okay?

12 Because this is your first appearance in court, you
13 are entitled to consideration for bail or release pending
14 trial. And depending on the facts of the case, your
15 circumstances, your ties to the community, things of that
16 nature, the Court can order that you remain in custody pending
17 trial or release you on conditions.

18 And I believe Mr. Pendergrass is here on a writ; is
19 that correct.

20 MR. BROWN: That is correct, Judge. He is in federal
21 custody.

22 THE COURT: Oh, okay.

23 MS. CALVERT: Your Honor, it is an unusual situation
24 though because Mr. Pendergrass is actually scheduled to be
25 released on August the 11th. He should have been eligible for

1 the halfway house. But because of the underlying state case,
2 the BOP considered it an open case. But it is my understanding
3 that there are no detainers or warrants for his arrest.

4 So I was hoping that the Court might actually ask
5 pretrial to interview him so that we can get the report
6 prepared and then Mr. Citronberg can do a bond hearing sooner
7 rather than later because really he should have been released
8 by now.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Well, I mean, I have no problem with, you
11 know, the Marshals or Pretrial Services, I mean, conducting the
12 interview. And then Mr. Citronberg can file a motion, you
13 know, for bond at the appropriate time. And then whoever this
14 case gets assigned to can handle that at the appropriate time.

15 So I don't know -- I don't think there is anybody
16 from Pretrial Services in the courtroom today.

17 MR. BROWN: No.

18 MS. CALVERT: I'll contact them after this hearing
19 and see if they can --

20 THE COURT: Just arrange that, yeah. Because if it
21 looks as though the time might come when Mr. Pendergrass might
22 be eligible for, you know, consideration for a bond, I mean, it
23 is -- while he is here, I think it probably makes sense to go
24 ahead and do that.

25 MS. CALVERT: Okay.

1 THE COURT: But for now Mr. Pendergrass will remain
2 in custody, of course, pending -- you know, reserving his right
3 to request a bond at the appropriate time.

4 All right. Well, we can proceed to the arraignment.

5 Ms. Calvert, how does Mr. Pendergrass intend to plead
6 today?

7 MS. CALVERT: Not guilty.

8 THE COURT: All right. And will he waive formal
9 arraignment including reading of the indictment?

10 MS. CALVERT: Yes, Your Honor.

11 THE COURT: All right. Mr. Brown, could you please
12 acknowledge the signatures of Ms. Calvert and Mr. Pendergrass.

13 MR. BROWN: Yes.

14 Mr. Pendergrass, I'm showing you the Plea with
15 Counsel form. Is this your signature above the signature of
16 defendant indicating you are pleading not guilty to Counts 1
17 through 10 of the indictment?

18 THE DEFENDANT: Yes.

19 MR. BROWN: And, Ms. Calvert, have you signed as
20 Mr. Pendergrass' attorney above the signature for the attorney?

21 MS. CALVERT: Yes.

22 MR. BROWN: All right.

23 THE COURT: All right. The Government has tendered
24 the Plea with Counsel form, and the record will reflect that
25 Mr. Pendergrass has received a copy of the charges, has waived

1 reading of the indictment, and has entered a plea of not guilty
2 to the charges against him in this case.

3 Mr. Brown, what is the estimated length of this case?

4 MR. BROWN: It should be a short case, Judge.

5 THE COURT: All right. The case is going to be
6 assigned to Judge Totenberg for trial and to Judge Salinas for
7 pretrial purposes.

8 Has Rule 16 been requested under these circumstances?

9 MS. CALVERT: Your Honor, I'll let Mr. Citronberg get
10 it directly from Mr. Brown.

11 THE COURT: Okay. All right. Well, under the local
12 rules, pretrial motions will be due in 14 days.

13 Are there any other matters for me to take up with
14 respect to Mr. Pendergrass?

15 MR. BROWN: No, Judge.

16 MS. CALVERT: No, Your Honor.

17 THE COURT: Okay. We'll be in recess.

18 COURTROOM DEPUTY CLERK: All rise.

19 **(The audio recorded proceedings were thereby**
20 **concluded at 9:49 A.M.)**

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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 7 pages constitute a true transcript of the audio recorded proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 27th day of February, 2019.

Shannon R. Welch

SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT